

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**February 10, 2005**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 10, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson; Bud Hentzen; Elizabeth Bishop and M.S. Mitchell. Denise Sherman; Ronald Marnell; Frank Garofalo and Gary K. Gibbs were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; Jamsheed Mehta, Transportation Planning Manager; David Barber, Advanced Plans Manager; and Rose Simmering, Recording Secretary.

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#### **❖ MPO ITEMS**

##### **1. PUBLIC HEARING ITEM - Public Involvement Policy recommended adoption, presentation by Jamsheed Mehta.**

The draft Public Involvement Policy (PIP) was presented for discussion and review to the MPO ad hoc Committee on Transportation Planning May through July of 2004. The Technical Advisory Committee on Transportation Planning (TAC) reviewed the draft at its meetings in August and September of 2004, and the final draft at the January 2005 meeting. The Coordinating Committee for Transportation Planning (CCT) reviewed the final draft at the December 2004 meeting. Also in December a final draft was presented to the MPO for initiation of the Comment / Review period which ran from 12/14/04 - 1/30/05. The MPO staff posted the draft document on its web site and advertised the comment / review period in two newspapers. No comments were received. During the Comment / Review period, staff, in discussion with State and Federal representatives, proposed two minor changes, which have been presented to the TAC at the January meeting. The proposed changes do not affect the spirit, scope, or intent of the Policy. Changes to the Policy will be reflected in the Tool Box document.

The recommended changes to the Public Involvement Policy document are:

- On page 4, in the Programs section, under Long Range Transportation Plan (LRTP) there is reference to a public involvement "**plan**". Staff recommends the word "plan" be replaced with process/schedule. "... A public involvement **plan process/schedule** will be created for each update of the Long Range Transportation Plan." Staff recommends the change since the intent was not to develop a specific plan (e.g. Policy Document), but to outline a process/schedule to assure public involvement that is appropriate to the project and atmosphere at the time of the specific plan development and update.
- On page 5, in the Public Involvement Policy Components section in the flowchart the number of days for the Long Range Transportation Plan (LRTP) and Other / MIS studies is listed as 30 days. Staff recommends changing this to 14 days. Changing the time frame to a "**minimum**" of 14 days provides consistency in the comment / review periods which the general public is more likely to remember. The change in the time period will also facilitate the update of the LRTP this year, providing more time for development of a quality document, yet maintaining a reasonable time frame for the public to review and comment on the proposed plan. Finally the change in the number of days required allows for greater flexibility in vital transportation decisions.

**Recommendation:** It is recommended the MPO Adopt the final draft of the Public Involvement Policy with the recommended changes.

Attachment: Final Draft Public Involvement Policy

JAMSHEED MEHTA Planning staff presented report.

**MOTION:** Adopt the final draft of the Public Involvement Policy with the recommended changes.

**DUNLAP** moved, **WARNER** seconded the motion, and it carried (9-0).

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##### **2. PUBLIC HEARING ITEM - Congestion Management System Policy recommended adoption, presentation by Jamsheed Mehta.**

The draft Congestion Management System Policy (CMS) was presented for discussion and review to the Technical Advisory Committee on Transportation Planning (TAC) in October of 2004, and the final draft at the January 2005 meeting. The Coordinating Committee for Transportation Planning (CCT) reviewed the final draft at the December 2004 meeting. Also in December a final draft was presented to the MPO for initiation of the Comment / Review period which ran from 12/14/04 - 1/14/05. The MPO staff posted the draft document on its web site and advertised the comment / review period in two newspapers. No comments were received.

**Recommendation:** It is recommended the MPO:

1. Adopt the final draft of the Congestion Management System Policy.

Attachment: Final Draft Congestion Management System Policy

JAMSHEED MEHTA Planning staff presented report.

MCKAY We were talking about 119<sup>th</sup> Street because of the connector between K96 and US54 outside of Maize road as one of the principal points, has anything been done more about that?

MEHTA Do you mean 119<sup>th</sup> as it runs all the way from 53<sup>rd</sup> Street south?

MCKAY No 119<sup>th</sup> Street goes all the way from Kellogg to K96, it goes through the City, and Maize Road does the same thing and we were talking about 119<sup>th</sup> at one of the meetings and I was wondering if anything was done anymore about it.

MEHTA On this map, since it is just about 119<sup>th</sup> on this map, we do not recognize any of the streets that are outside of the urbanized area, and the urbanized area is the one with the yellow background to it. So we are not considering any of the street systems outside of the urbanized area as part of the Congestion Management System.

MCKAY It's in the urbanized area. It is the next mile west of Maize road, and it is a connector all the way from 54 Highway to K96, it is a straight shot so you don't have to go through any towns or anything, and we had talked about at one time making that part of the red and I was just wondering if anything had been done about it.

MEHTA On the monitoring systems, the CMS identifies the region to be considered and then what streets within that region. So the first step is what is the region, it is hard to read on this slide, but on your page 6, if it is a yellow boundary that is the urbanized area that the Federal Highway and the Census Bureau and all of us work together to identify it. So if that part of 119<sup>th</sup> Street that you are talking about which is a mile north off 53<sup>rd</sup> Street all the way to K96 that is not in the official urbanized area.

MCKAY So the answer is no.

MEHTA Correct. It is not being monitored. All this does is tell us who is going to monitor the street system for traffic volumes and if we went into non-attainment how will we use that kind of information.

BISHOP Speaking of 119<sup>th</sup> Street, I would like to put on record along with congestion management and planning there are other values other than just solving congestion having to do with how we treat streets and arterials. 119<sup>th</sup> Street is a good example, it is a parkway, there is sidewalk down both sides of the street, it is beautifully landscaped for much of it and I think the desire for that part of the city is for it to remain that way, rather than just widening it out.

DUNLAP We put the plan together and we study it, what is the connecting link between studying it, planning it and doing something about it?

MEHTA It is the cost that holds it back from being designed and then being let as a project. You are talking about a State Highway system with a massive interchange, in fact two massive interchanges to be linked together. As I recall prior to the most recently approved State Comprehensive Transportation program that particular section that you just described, I-135 between K96 and 254 further north.

DUNLAP It's actually the intersection of I-135 northbound and K96 westbound.

MEHTA I believe that project was on the Secretary's list prior to the Comprehensive Transportation program being approved. At that point that project was not on the list, for example we have so many projects for example the Northwest Bypass being studied and others but this particular one you mentioned was not on that list. If it is justified on our long-range plan and then when State funds are available in the next program then we will definitely be pushing for it again.

DUNLAP So we have the ability here in our Comprehensive Plan to elevate those items that is how the time goes between the CMS and the implementation?

MEHTA The CMS can add to it, even without it I think we have already justified that as a high priority in your current long-range transportation plan, there is a circle or a dot that represents improvements needed at that location.

DUNLAP Are cars getting better, do we have fewer cars or more wind because we don't seem to have an air quality problem anymore and we used to have.

MEHTA A combination of a lot of things, cars are getting better, every year there are additional requirements put on converters, or how much ozone-causing pre-cursors come out so that would be something at the national level that is happening. Locally we are not doing anything substantial to make that difference, there is an effort to do some public involvement or public notification so people get involved and know what to do. It gets down to the basic as to what is a good day to mow your lawn type of thing.

DUNLAP But we have been getting better and I don't know why.

MEHTA I couldn't tell; some of what we are getting in the air comes from way south.

**MOTION:** Adopt the final draft of the Congestion Management System Policy.

**MITCHELL** moved, **DOWNING** seconded the motion.

JOE LANG To make the record clear for both of these you need to open for public comment and any comments on the previous one that should be reopened too.

DUNLAP Are there any public comment on previous item? Any comments on this item? On those two items I can close the public comments. Now is there any discussion on the motion?

**MOTION CARRIED:** (9-0).

**3. Transportation Improvement Program proposed amendment review/ setting of public hearing date, presentation by Jamsheed Mehta.**

A request was made by the KDOT to amend the current 2004-2008 Transportation Improvement Program (TIP) to include Federally Earmarked program funds that are time sensitive. The federally earmarked program funds require programming into the TIP in 2005. Early programming will allow the KDOT to get these projects into the system and will assure no loss of funding due to unforeseen circumstances.

On the attached spreadsheet (Attachment A – KDOT/WICHITA Proposed TIP Amendment) the first three projects are the federally earmarked projects. Other projects KDOT requested including in this amendment are:

- STEP or Special Traffic Enforcement Program that has been newly funded, requiring inclusion into the TIP.
- Sobriety Checkpoint program increase in funding to include Sedgwick County.
- Two construction projects that have either been newly funded requiring inclusion into the TIP and/or existing funds that have increased requiring an amendment.

The Technical Advisory Committee on Transportation Planning (TAC) reviewed the amendment request on January 31, 2005 and unanimously voted to recommend the addition of the federally earmarked projects and other projects as presented into the current 2004-2008 TIP.

**Recommendation:** It is recommended the MPO:

2. Set the February 24, 2005 MPO meeting as the public hearing to adopt the proposed amendment to the Transportation Improvement Program.

Attachments:

Attachment A: List of current TIP projects with approved federal funding.

**Attachment A**

**WICHITA-SEDGWICK COUNTY  
TRANSPORTATION IMPROVEMENT  
FISCAL YEARS 2004-2008**

**Cost Per \$1,000**

FY	CO				Federal	State	Local
2005	SG	<b>Juris:</b> W-RAIL <b>Proj#:</b> N-0160-01	<b>Route:</b> CENTRAL RAIL CORRIDOR <b>Loc:</b> WATERMAN TO 21ST STREET NORTH	<b>Eng.</b> <b>R/W</b>	0 0	0 0	0 0
		<b>TIP#:</b> 472-84071 <b>Length (mi):</b>	<b>Work:</b> GRADE SEPERATION <b>Funding:</b> F <b>Phase:</b> GRADE SEPERATION	<b>Cons</b> <b>Total</b>	3,668 3,668	0 0	0 0
2005	SG	<b>Juris:</b> W/SG <b>Proj#:</b>	<b>Route:</b> ITS PROGRAM <b>Loc:</b> WICHITA-SEDGWICK COUNTY	<b>Eng.</b> <b>R/W</b>	1,250 0	0 0	0 0
		<b>TIP#:</b> <b>Length (mi):</b>	<b>Work:</b> ITS SYSTEM DEPLOYMENT <b>Funding:</b> F-ITSDP <b>Phase:</b> ITS SYSTEM DEPLOYMENT	<b>Cons</b> <b>Total</b>	0 1,250	0 0	0 0
2005	SG	<b>Juris:</b> KDOT <b>Proj#:</b> K-6389-01	<b>Route:</b> I-235 INTERCHANGES <b>Loc:</b> I-235/US-54 & I-235/CENTRAL AVE	<b>Eng.</b> <b>R/W</b>	4,500 0	708 0	0 0
		<b>TIP#:</b> <b>Length (mi):</b>	<b>Work:</b> RECONSTRUCT & WIDEN <b>Funding:</b> K/F-NCPD & IMD <b>Phase:</b> PE	<b>Cons</b> <b>Total</b>	0 4,500	0 708	0 0
2005	SG	<b>Juris:</b> KDOT <b>Proj#:</b>	<b>Route:</b> WICHITA METRO AREA <b>Loc:</b> VARIOUS	<b>Eng.</b> <b>R/W</b>	70 0	0 0	0 0
		<b>TIP#:</b> <b>Length (mi):</b>	<b>Work:</b> SPECIAL TRAFFIC ENFORCEMENT PROG. (STEP) <b>Funding:</b> F-SECTION 157 <b>Phase:</b>	<b>Cons</b> <b>Total</b>	0 70	0 0	0 0
2005	SG	<b>Juris:</b> KDOT <b>Proj#:</b> K-38	<b>Route:</b> WICHITA METRO AREA <b>Loc:</b> VARIOUS	<b>Eng.</b> <b>R/W</b>	11 0	0 0	0 0

		<b>TIP#:</b>	<b>Work:</b> SOBRIETY CHECKPOINTS (OMV)	<b>Cons</b>	0	0	0
		<b>Length (mi):</b>	<b>Funding:</b> F-SECTION 163 <b>Phase:</b>	<b>Total</b>	11	0	0
2006	SG	<b>Juris:</b> KDOT	<b>Route:</b> US-54 (GODDARD)	<b>Eng.</b>	0	5	0
		<b>Proj#:</b> K-9056-01	<b>Loc:</b> 199TH ST W TO 183RD ST W	<b>R/W</b>	0	27	13
		<b>TIP#:</b>	<b>Work:</b> CONSTRUCT FRONTAGE ROAD	<b>Cons</b>	0	279	138
		<b>Length (mi):</b>	<b>Funding:</b> K/SC <b>Phase:</b> CONSTRUCTION	<b>Total</b>	0	311	151
2008	SG	<b>Juris:</b> KDOT	<b>Route:</b> INTERSECTION	<b>Eng.</b>	0	59	39
		<b>Proj#:</b> KA-0155-01	<b>Loc:</b> AT MAIZE RD & 53RD ST N	<b>R/W</b>	0	0	77
		<b>TIP#:</b>	<b>Work:</b> RECONSTRUCT & WIDEN	<b>Cons</b>	0	674	448
		<b>Length (mi):</b>	<b>Funding:</b> K/MAIZE <b>Phase:</b> CONSTRUCTION	<b>Total</b>	0	733	564

JAMSHEED MEHTA Planning staff presented report.

DUNLAP We are setting the date for public comment?

MEHTA Correct and we will come back to you on the February 24<sup>th</sup>.

MITCHELL The last project, will that be designed by KDOT?

MEHTA Yes.

BARFIELD On the 1<sup>st</sup> project you are saying that work will start on the north side of 17<sup>th</sup> Street is that what that is?

MEHTA It's approximately in that vicinity but the end result is that 17<sup>th</sup> Street is not grade separated, so the actual tracks heading up to the elevated section occurs south of 17<sup>th</sup> Street but there might be some work related with it which goes a little north of 17<sup>th</sup> Street but does not end up with a separation at that point.

BARFIELD Why does it say to 21<sup>st</sup> Street?

MEHTA Because the tracks do have to be re-aligned, you have the UP track coming from one direction and the BNSF from another, and when they merge they have to be brought together, and so at grade there is a lot of work happening.

DUNLAP The action today is to set the public hearing date for February 24, 2005.

**MOTION:** Set the February 24, 2005 MPO meeting as the public hearing to adopt the proposed amendment to the Transportation Improvement Program.

**MITCHELL** moved, **JOHNSON** seconded the motion, and it carried (9-0).

MEHTA I have the three MPO items done, here on this yellow handout is a list of MPO Schedule/Overview of Upcoming Activities.

DUNLAP We have made some effort to expand MPO that has apparently not happened do we know when that will happen?

MEHTA On your sheet, February 24<sup>th</sup> the 2<sup>nd</sup> bullet, two weeks from now we will get to you the agreement that has been worked out between the City of Wichita, Sedgwick County, and KDOT's law offices and that has been proposed by the coordinating committee, which includes yourself as the Chair and representatives from Wichita, Sedgwick County, Transit, and KDOT.

DUNLAP Have the new member organizations identified individuals yet?

MEHTA Yes, those are identified in the agreement and we will make sure those bodies are aware of what is coming up on February 24<sup>th</sup>.

DUNLAP We are going to close as the MPO meeting.

DUNLAP Now we will open the regular meeting of the MAPC.

❖ **PLANNING COMMISSION ITEMS**

4. Approval of January 13, 2005 meeting minutes.

**MOTION:** Approve January 13, 2005 meeting minutes.

**HENTZEN** moved, **BISHOP** seconded the motion, and it carried (7-0-2).

**MITCHELL** and **MCKAY** abstained.

❖ **SUBDIVISION ITEMS**

5. Consideration of Subdivision Committee recommendations from the meeting

5-1. **SUB2004-140 – Revised One-Step Final Plat – WATERWALK PHASE 1 ADDITION, located north of Kellogg and west of Broadway.**

**NOTE:** This is a replat of the Eastbank 1st Addition. This replat includes the vacation of Wichita Street.

This revised final plat has increased the site size to include additional property to the north for a proposed restaurant.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage easement is needed to correspond with the storm sewer denoted on the drainage plan.**
- D. The final plat tracing shall denote complete access control along Kellogg and reference the access control in the plat's text.
- E. A Block shall be designated on the face of the plat as referenced in the plat's text.
- F. **County Surveying** advises that the legal description does not match the plat boundary.
- G. **County Surveying** advises that according to the City of Wichita Resurvey of 1962 the East line of this plat will have a deflection angle at the centerline of Dewey.
- H. **County Surveying** advises that this plat does not meet the Kansas Minimum Standards for a Boundary Survey.
- I. The public access easement needs to be referenced in the plat's text.
- J. The street and utility easement shall be dedicated as street right-of-way for Wichita Street. The plat's text shall note the dedication of the street to and for the use of the public. The property boundaries shall be adjusted accordingly.
- K. An off-site dedication of street right-of-way shall be established by separate instrument for the remaining portion of Wichita Street.
- L. The Applicant is advised of the need for potential KDOT approval for off-site parking to the south as denoted on the site plan.
- M. The plat's text shall include the language "Existing public easements and dedications being vacated by virtue of K.S.A. 12-512(b)."
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.

- U. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. The Utility Location Coordination Council has reviewed this revised plat.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

DUNLAP Anyone here from the public to speak on this Item?

**MOTION:** To approve subject to staff recommendation

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (9-0).

5-2. **SUB2005-06 – One-Step Final Plat – MARQUEZ ADDITION, located on the northwest corner of 61<sup>st</sup> Street North (US 254) and 127<sup>th</sup> Street East.**

**NOTE:** This is an unplatted site located in the County within three miles of Wichita's boundary. This site is located in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. The site has been approved for a zone change (ZON 2004-04) from RR, Rural Residential to OW, Office Warehouse. A Protective Overlay (P-O #138) was also approved for this site addressing uses, screening, signage, lighting and architectural design.

**STAFF COMMENTS:**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. A restrictive covenant is required that prohibits non-domestic wastes on the site until public sewer is available.
- B. The site is currently located within the Butler County Rural Water District No. 5. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection. The applicant will be connecting to the rural water line.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. City Water and Sewer Department requests a petition for future extension of sanitary sewer and City water services.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. A drainage plan is needed.
- F. County Engineering requests a guarantee for paving of the frontage road including a temporary turnaround at west end, along with 127th St. East from Highway 254 to the frontage road.
- G. County Engineering requests complete access control to 127th St. East. Complete access control along the frontage road is needed from 127th St. East to the point where lot line turns to the southwest.
- H. In accordance with the Protective Overlay, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. All access drives shall be in accordance with Sedgwick County Service Drive Code.
- J. Additional right-of-way is needed along 127th St. East. The Access Management Regulations requires a 60-ft half-street right-of-way width along rural arterials.
- K. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- L. A PO Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved PO and its special conditions for development on this property.
- M. The applicant is reminded that this site is located within three miles of the City Limits of Wichita and will be heard by City Council. Therefore, the City Council signature block needs to be included on the final plat.
- N. The MAPC signature block needs to reference "Morris K. Dunlap, Chair".
- O. The signature line for the County Commissioners Chairman needs to reference "David M. Unruh".
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of

this binder and any relevant conditions found by such a review.

- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Z. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

DUNLAP Anyone here from the public to speak on this Item?

BISHOP Just need an answer to a question. Referring to staff comments Item A. This is on the Marquez Addition. Since this is a plat for an office warehouse, I wonder if you could explain that to me? Does that mean they are not going to be able to go into business until public sewer is available?

NEIL STRAHL No that's just a standard covenant that County Code requests for any non-residential property.

BISHOP The covenant is going to prohibit non-domestic waste so I am reading this wrong?

MILLER They could open an office or a commercial establishment as long as all they are doing is a bathroom or some use that does not require anything other than domestic type waste to be treated. Most commercial uses need only a typical domestic bathroom.

STRAHL Maybe it should say non-industrial

BISHOP That is more clear.

**MOTION:** To approve subject to staff recommendations.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (9-0).

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❖ **PUBLIC HEARINGS – ZONING ITEMS**

6. **Case No.: ZON2004-67** – TPI Petroleum, Inc., Douglas Miller Viet Le (contract purchaser) Request zone change from "LC" Limited Commercial and "B" Multi-family Residential to "GC" General Commercial on property described as;

Lots 289, 290, 291, 292, 293, 294 and 295, except the North 10 feet of Lot 289 for street right-of-way, all on Hydraulic Avenue in Granville Park Addition to Wichita, Sedgwick County, Kansas. Generally located at the southwest corner of Hydraulic Avenue and 13<sup>th</sup> Street North.

**BACKGROUND:** The applicant requests a zone change from “LC” Limited Commercial and “B” Multi-family Residential to “GC” General Commercial on Lots 289 – 295, the Granville Park Addition. The subject properties are located on the southwest corner of Hydraulic Avenue and 13<sup>th</sup> Street North. The applicant proposes redevelopment of the property for used car sales and auto bodywork and painting. The “GC” zoning district allows outdoor vehicle and equipment sales and auto bodywork and painting.

The subject site currently has a vacant 1,000-square foot gas station building on it. The applicant proposes to build an additional 2,400-square foot building behind it for auto mechanical work, bodywork and painting. The applicant proposes to use the vacant building as office space for both of the proposed uses. The applicant has proposed to enclose the area where the paint and body works will be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts a Legion Hall and on its east and west sides where it is adjacent to residential zoning. The applicant has also proposed to close the entrances onto the site from Pennsylvania Avenue.

East of the subject site and across Hydraulic Avenue are a dentist office, zoned “LC”, and single-family residences, zoned “LC” and “B”. South of the subject site there is American Legion Post 273, zoned “LC”, and single-family residences, zoned “B” and “SF-5” Single-family Residential. West of the subject site, across Pennsylvania Avenue, there is a vacant lot, zoned “LC”, and single-family residences, zoned “SF-5”. North of the subject site, across 13<sup>th</sup> Street North, there is a car sales lot, a warehouse, a bar and a neighborhood retail strip containing a self-service laundry, barber and beauty shops and some vacant space. All of these developments are zoned “LC”.

**CASE HISTORY:** The Granville Park Addition was recorded with the Register of Deeds April 20, 1887. The site is in the McAdams Neighborhood Revitalization Plan, which was approved by the Wichita – Sedgwick County Metropolitan Area Planning Commission (MAPC) April 24, 2003 and adopted by the Sedgwick County Board of County Commissioners (BoCC, Resolution 114-03) May 14, 2003 and the Wichita City Council (WCC, Ordinance 45-726) June 3, 2003. The site is also in the McAdams Neighborhood Rezoning area (DR2004-04), which was recommended by the MAPC October 7, 2004 and approved by the WCC (Ordinance 46-405) November 19, 2004. The MAPC deferred this case at their January 13, 2005 meeting and instructed the staff and applicant to present it to DAB I for consideration. DAB I will consider this case at their February 7, 2005 meeting.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“LC” Limited Commercial	Local retail, warehouse, bar, car sales
SOUTH:	“LC” Limited Commercial “SF-5” Single-family Residential “B” Multi-family Residential	American Legion Hall Single-family residences
EAST:	“B” Multi-family Residential “LC” Limited Commercial	Single-family residences Dentist office
WEST:	“LC” Limited Commercial “SF-5” Single-family Residential	vacant property Single-family residences

**PUBLIC SERVICES:** The subject property has access to 13<sup>th</sup> Street North, a four-lane arterial with a center turn lane. Current traffic volumes are approximately 13,784 – 14,369 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on 13<sup>th</sup> Street North will increase to approximately 22,500 vehicles per day. This estimate of future traffic volumes on 13<sup>th</sup> Street was made prior to the Central Railroad Corridor Project, which will put the railroad tracks over 13<sup>th</sup> Street, eliminating traffic stoppages due to train traffic. The site also currently has access onto both Pennsylvania Avenue and Hydraulic Avenue, two-lane residential streets. Municipal water and sewer services and all other utilities are available to this site.

**CONFORMANCE TO PLANS/POLICIES:** The McAdams Neighborhood Revitalization Plan has stated that a lack of neighborhood serving retail commercial services is an economic development issue for this area and the 13<sup>th</sup> Street North corridor. The plan identifies the need for a grocery store, a restaurant, a pharmacy and a dry cleaner for the area. The plan has also designated the 13<sup>th</sup> Street North – Hydraulic intersection as a primary Neighborhood Entryway, with proposed landscaping and signage integrated into a designed entrance. The applicant’s proposed uses of a car sales lot and an auto paint and body shop do not match the goals of the plan. The new zoning brought about by the McAdams Neighborhood Rezoning ordinance had as a stated principle that no property will be rezoned to a less restrictive zoning classification. The proposed rezoning of “LC” and “B” to “GC” does not conform to that principle.

The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for “Commercial” development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. There are two other car sales lots in the area, one north of the site across 13<sup>th</sup> Street North and another approximately 1,000-feet west of the site, past IH-135, on 13<sup>th</sup> Street North and Cleveland Avenue. Both of these car sale lots were in place prior to the adoption of both the McAdams Neighborhood Revitalization Plan and the McAdams Neighborhood Rezoning and as previously stated, neither the proposed rezoning nor the proposed uses meet the goals or principles of those adopted ordinances.

**RECOMMENDATION:** In the past the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPD has also recommended that buildings that had in the past been used for automobile activities, such as gas stations, be considered as possible sites for car sales. The MAPC and the MAPD have also noted, in a past case, that certain corridors that serve as gateways or entrances into the community (Zoo Boulevard and West Street is an example) are not appropriate sites for car sales. The 13<sup>th</sup> Street North and Hydraulic Avenue intersection has been designated as a major entrance into the McAdams neighborhood. The implementation of the McAdams Rezoning ordinance and the McAdams Revitalization Plan do not indicate this site as appropriate for a less restrictive zoning (the requested “GC” zoning) to allow an auto paint and body shop or for a car sales lot. Based upon information available prior to the public hearing, planning staff recommends



that the request be DENIED. Staff does recommend that the site's lot that is zoned "B" be rezoned "LC" to match the rest of the site's zoning.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of various local retail uses, an American Legion Post, office and two used car sales lots, all along the 13<sup>th</sup> Street North frontage. Single-family residential development is located behind these non-residential uses. All of the properties east of IH-135 along 13<sup>th</sup> Street North are zoned "LC" Limited Commercial. The two existing car sales lots were in place prior to the implementation of the McAdams Neighborhood Rezoning and the Revitalization Plan. One of the car sales lots, the one north across 13<sup>th</sup> Street North from the subject site, appears to be a less than robust business, which is not out of character with this section of 13<sup>th</sup> Street North. The proposed used car lot is not in conformance with the goals of the McAdams Neighborhood Revitalization Plan. There are no auto body and paint shops in the area and the proposed "GC" General Commercial zoning does not conform to the principles of the McAdams Neighborhood Rezoning.
2. The suitability of the subject property for the uses to which it has been restricted: The north six of the seven lots of the subject site are zoned "LC" Limited Commercial, with the most southern lot zoned "B" Multi-family Residential. The property is suitable for the commercial uses to which it has been restricted, which includes the neighborhood serving retail commercial services that the neighborhood has stated as needed for economic redevelopment of the area. The single "B" zoned lot is too small to be developed and should be rezoned "LC" to match the rest of the subject site's zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed uses of a car sales lot and an auto body works and paint shop do not match the goals of the McAdams Revitalization Plan, which has stated that there is a need for the development of neighborhood serving retail commercial services in the area. Allowing another car sales lot into the area is not the type of development that the neighborhood has indicated it needs or wants. An auto body and paint shop is completely out of character with the area and does not match the neighborhood's needs or goals for economic redevelopment. If approved, both proposed uses could bring a similar type of development onto the vacant lot west of the site, which would seem to be at odds with the neighborhood's stated goals of attracting local retail development. A more appropriate location in the McAdams Neighborhood for both proposed uses would be south of 17<sup>th</sup> Street North between Mosley Avenue and Washington Boulevard, where there is an existing industrial corridor that has similar uses as those proposed.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The proposed uses do not match the goals of the McAdams Neighborhood Revitalization Plan. The plan noted a need for local retail development, including the specific need for a grocery store, a restaurant, a pharmacy and a dry cleaner for the area. The proposed rezoning from "LC" and "B" to "GC" is contrary to the stated principle of the McAdams Neighborhood's rezoning that no property will be rezoned to a less restrictive zoning classification.
5. Impact of the proposed development on community facilities: The proposed uses of this property would have limited impact on community facilities.

If, however, the Planning Commission finds a car sales lot as an appropriate use for this site, staff recommends that the site's "B" Multi-family Residential zoned lot (Lot 295) be rezoned to "LC" Limited Commercial to match the rest of the site's "LC" zoning and a Conditional Use for vehicle sales outdoors be approved subject to the following conditions:

1. All requirements of Article III, Section III.D.6.x. Of the Unified Zoning Code (UZO) shall be met. Any variance from Article III, Section III-D, 6.x of the UZO would require a waiver approved by the Wichita City Council.
2. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks. No sale or rental of trailers, vehicles or trucks larger than pick ups. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business.
3. The applicant shall dedicate by separate instrument an additional 10-feet of street right-of-way along the property's 13<sup>th</sup> Street North frontage within six months of final approval of the Conditional Use.
4. The applicant shall dedicate by separate instrument complete access control along the site's Hydraulic Avenue and Pennsylvania Avenue frontages. Where existing access is currently located on these frontages, the applicant shall guarantee the continuation of the curb, per City Standards.
5. No elevated display areas.
6. Parking spaces for employees and customers shall be provided on the property as required by the UZO and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless an employee drives the vehicle. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. A landscape plan, per the Landscape Ordinance, shall be submitted, including landscaped street yards and a landscape buffer along the south side of the site and the east and west sides where the site is adjacent to residential zoning, which shall be provided and maintained on the property as approved by the Planning Director.

9. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within six months of approval of the Conditional Use by the MAPC or governing body, as applicable. The site plan shall include a 6-foot wooden, stockade type fence located on the south side of the site and along the eastern and western portions of the site where it is adjacent to residential zoning, all lighting, including those on the building, the location and size of the office and garage space within the current building and any additional buildings, approved signage and solid screening around the trash receptacle.
10. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

DAB I RECOMMENDATION; ZON2004-67  
February 7, 2005 meeting

DAB I considered three possible actions on the requested zoning change from "LC" Limited Commercial and "B" Multi-family Residential to "GC" General Commercial on Lots 289 – 295, the Granville Park Addition, located on the southwest corner of Hydraulic Avenue and 13<sup>th</sup> Street North. The zone change request was made to allow auto bodywork and painting and outdoors vehicle and equipment sales. The three possible recommendations were:

- (1) The applicant's revised request; Rezone all the lots "GC" with a protective overlay to allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted "GC" uses. The applicant would also enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts a Legion Hall and on its east and west sides where it is adjacent to residential zoning. The applicant would also close the entrances onto the site from Pennsylvania Avenue
- (2) Staff's first recommendation; Deny the request for "GC" zoning, but rezone the "B" zoned lot to "LC", to match the rest of the site's lots "LC" zoning.
- (3) Staff's alternative recommendation; Deny the request for "GC" zoning, but rezone the "B" zoned lot to "LC", to match the rest of the site's lots "LC" zoning and allow a Conditional Use for vehicle sales outdoors be approved subject to the 12 conditions listed in the Staff report.

There were people at the meeting that spoke against the proposed zone change and the proposed uses of auto bodywork and painting and outdoor vehicle sales. Discussion among the DAB members included the McAdams Neighborhood Revitalization Plan's impact on the site, development or a lack of it in the immediate area, the impact of the proposed uses and development of the site as opposed to it being vacant. There was also discussion about allowing only the car sales lot as a conditional use on the site without the auto body and paint shop, as well as discussion about car sales lots in the area.

Bill LONGNECKER, Planning Staff DAB I voted (8-0) to deny the request for "GC" zoning, but rezone the "B" zoned lot to "LC", to match the rest of the site's lots' "LC" zoning.

BARFIELD If we follow the DAB recommendation, would it allow the vehicle sales but not allow the paint and body shop?

LONGNECKER No, the DAB recommended Option 2, which would rezone only this "B" lot to "LC"; no auto sales or paint and body shop would be allowed.

BARFIELD So the revisions that the applicant made would be to do what?

LONGNECKER The revisions that the applicant proposed from the original application and which are reflected in the applicant's January 6<sup>th</sup> letter, which I also attached to the DAB recommendation, was to rezone the whole site to "GC" and then put a Protective Overlay over that "GC" zoning to allow only the auto body and paint and sale of used cars as the only "GC" uses on that site. The rest of it would be "LC" uses as permitted by right.

BARFIELD A paint and body shop cannot be in "LC"?

LONGNECKER Correct, the "LC" does allow motor repair, transmission, brakes, etc., as per right, but no painting or bodywork.

MCKAY So the recommendation is to zone that south part of that to "LC" which throws away the request for car sales without a Conditional Use?

LONGNECKER The applicant was asked at the time of the DAB meeting if they wanted to go with the Conditional Use for the car sales on the "LC" properties, with this rezone, and at that time the applicant stated that they want to do both the auto body works, painting, and the car sales lot, It's an either/or proposition for them.

MITCHELL You said either/or. I think you are talking about both uses or nothing?

LONGNECKER Yes, both the paint and body shop and auto sales or nothing.

TIM AUSTIN POE AND ASSOCIATES, AGENT FOR THE APPLICANT In terms of what transpired at the DAB meeting, there haven't been any revisions. Our original application was initially the "GC" zoning with a Protective Overlay, and we had the site plan. We have not revised our application. Our client wants a facility in which he can sell vehicles and also repair vehicles on site as well. In discussing with him before the meeting, basically his thought process is that if it is a place for vehicle sales and he has to go and spend extra money buying land to build a facility elsewhere for repair, then it becomes an economic disadvantage for him as far as his business model and his operations, which is to have both of those activities consolidate on the same tract of land. (Note: The application turned into the Planning Staff on December 12, 2004 requested "GC" zoning to allow auto sales and a paint and body shop. The January 6, 2005 letter referred to above, revised that request to include a Protective Overlay, limiting "GC" uses to only auto sales and a paint and body shop.)

The vote of the DAB the other night was not reflective of the discussion among the members. I think their discussion mirrored the discussion we had the last time here at the Planning Commission where we are trying to balance issues. There was recognition that we have a vacant tract of land, and that it is probably not viable as a retail use, but the question was how long is the neighborhood willing to sit there and let that property sit vacant? If you knew that it could be used in a year from now that is one thing, but if we have to wait five years that is another thing. We do not think that it is suitable for retail. The City is making a large investment in the 21<sup>st</sup> Street Corridor, all the way from Hillside over to Arkansas. We have an investor who doesn't need any government incentive. He is willing to buy it, to develop it and develop with site feature that minimizes most of the things that are considered to be obtrusive in the neighborhood. One of the DAB members talked about the fact that one of the auto repair shops that she frequented closed business, and now she has to go somewhere else. I think staff recognizes that when they state in the staff report that there are no other body shops in this area. If you think about your own business operation, we take things to places that our convenient. Where we know them. We don't go across town. You go where it is convenient to either your residence or to your place of business. We think that a body shop can be neighborhood serving and provide a service to that area.

I talked to one of my clients who is an auto dealer about their body shop and the operations, and the technology with the hood systems, and the filtering systems, and you don't get much smell from the solvents and from the paint. It is just an incremental increase in terms of noise, or what somebody perceives that a body shop for some reason is bad. I am representing the contract purchaser, and obviously there is no benefit to the property owner if you follow the DAB recommendation. I think it is all or none with him. He either gets the zoning that allows him to do the complete activities that meets his business plan or he is going to look elsewhere.

TAPE CHANGE

BARFIELD You said the south entrance on Pennsylvania would be closed?

AUSTIN Yes.

BARFIELD You have agreed to close those entrances, which I would conclude, would be both of them on Pennsylvania.

AUSTIN My applicant agreed with the closing of one entrance and it matches the site plan, and that might be a misunderstanding between myself, and Mr. Longnecker. (Note: Mr. Austin was in error when he made this statement as indicated below.)

BARFIELD You believe that this is the best use for this property. I have to disagree with you on the body shop. I won't disagree with you when we talk about the fact that there is a need for body shops in the city. But, I can't think of a site where there is a body shop in a residential area, and that is what, in my estimation, makes this an inappropriate site for a body shop. I don't have a problem with the car sales, but I don't think it is appropriate to have a body shop located within 200 feet of a residential area, or a group of residence right across the street. You talk about a study that said that for anybody to come to this location, they would have to have a government subsidy. I think you have a client here that shoots that theory in the foot, so I can't agree with you there. Going back to the DAB recommendation, what was the immediate objection, was it to the body shop, or car sales, or both?

AUSTIN The main objection was to the body shop, it wasn't as much the car sales, and I was surprised about the motion because I thought they would approve the car sales. There was some discussion after the motion to clarify it. Council Member Brewer had asked if they thought there were two options instead of three. The individual that had made the motion left as she had made it. While it is true that investment is needed in the area, whether it is subsidized or not, a car sales investment and investment for retail are two different animals. Just for clarification, this report was talking about a retail operation, which I suppose car sales can be retail in some context, but for clarification, they were talking about retail. As a reminder, this property has been vacant for two years, and there has been no other contracts on that property. There is some office space across the street that does have some vacancy. When you look at *The McAdams Neighborhood Plan*, it just says "redevelopment concept." It is what it is. It is a Conceptual Plan. It is what they would like to see but there is nothing set in stone.

MITCHELL Tell me for sure what items in the recommendation you agree with, and don't.

AUSTIN We do not agree with Condition #3 or Condition #4.

MITCHELL Is that based on the closure of two exits onto Pennsylvania?

AUSTIN That is not how I interpret that. I guess Mr. Longnecker wants to add that.

MITCHELL Your site plan does show closing both of them on Pennsylvania.

AUSTIN I stand corrected. I will abide by Condition #4.

MITCHELL So the only condition that you do not agree with is Condition #3?

AUSTIN Yes.

DUNLAP Is there anyone else from the public to speak on this item?

JOAN WARE, 1320 PENNSYLVANIA, WICHITA KS 67214 I live approximately 150 feet from where they want to put in this auto sales and paint and body shop. We have a lot of noise in our area due to I-135 running right along the canal route. We have a lot of pollution coming from there. We have noise coming from the American Legion, and we don't need another noisy something in the neighborhood. I am not against changing the "GC" to "LC" but I am against a car lot being put in there. We have two used car lots on 13<sup>th</sup> Street that are about 800-1000 feet apart and I don't know what we need a third one for. This is not something we would like to see in our community. This would just be another area where people hang out. We would like to keep it quiet and safe, and I don't see where a car lot would be a benefit to us, because we want something that we can use. We do not have a grocery store in the area. We have nothing.

DUNLAP You seem to be saying you'd rather not have a car lot, I hear that real well, how about the body shop?

WARE We don't want the body shop either, that is noise, that is paint, that is odor, we have that.

DUNLAP You hadn't mentioned it, just wondered if you had any objections.

WARE We have a lot of people that are having breathing problems and part of that is caused by traffic from the canal route, and all of the fumes we get there. Our air is never clear.

DUNLAP Mr. Austin you have rebuttal?

AUSTIN NO.

DUNLAP We will reserve the comments to the Commission.

MCKAY I served on the McAdams Task Force for this body, and one of the major issues that came out of it was trying to get people to try to invest private money into this area. That was a major concern of the task force.

BISHOP I think the *McAdams Neighborhood Revitalization Plan* makes it clear what is needed for that area, both because it is a gateway into the neighborhood at that point, and because there was a need for retail, neighborhood serving retail. I understand about the investment into this property, but I believe that not only does it not fit that plan, in a number of respect, but would exacerbate the problem of attracting retail to that area.

**MOTION:** I move that we deny the request for "GC" zoning but rezone the "B" zone lot to "LC" to match the rest of the sites "LC" zoning.

**BISHOP** moved, **BARFIELD** seconded.

JOHNSON Someone had mentioned that there are no body shops in residential areas. I know of a body shop at Central and I-135, I don't suppose that will go down far enough for zoning on that area around that (referring to a map). I know there are residences backed up against it; I just don't know what the zoning is.

LONGNECKER The staff report notes, that we found no other body shops in the immediate area. The report also identified areas within the McAdams Neighborhood, south of 17<sup>th</sup> Street South between the Washington and Mosley Corridor, which had the zoning for body shops, and there were body shops already in that area. We identified that area as a more appropriate area for a body shop.

JOHNSON I am also thinking about other ones along I-135 that are on major streets, I-135 and Central, K-15 South of Kellogg and North of Lincoln.

LONGNECKER It is probable those body shops are like the two car lots in this immediate area. They were in place prior to the implementation of *The McAdams Revitalization Plan*.

JOHNSON When was that plan done?

LONGNECKER The plan was approved by MAPC, April 24, 2003, adopted by the County May 14, 2003 and the Wichita City Council June 3, 2003.

BARFIELD Mr. Johnson, I am very familiar with that intersection, which corner are you speaking of at I-135 and Central?

JOHNSON At the northwest corner.

BARFIELD There are no residences on Hydraulic, and there are no residences on either side east or west of Hydraulic. The closest residence would be just east of KG&E, and if you go to the north there are no buildings on 9<sup>th</sup> Street.

MITCHELL I don't intend to support the motion, because if the McAdams Plan is as recent as 2003, it would appear that the impetus for retail businesses along this Corridor is certainly lacking, has been, still is, and it would appear to me that any use of that property would improve the neighborhood above what it is right now. I will not support the motion.

DUNLAP I feel like it is a large empty lot. I don't see it as a more intensive use then the nightclub there that creates a lot of problems. We have an empty retail space and quite a bit more empty retail space in the neighborhood. Some of it has been empty for a longtime on the north side of 13<sup>th</sup>. I don't think we are going to get retail for this area. We do have car lots north and west, and

the west one is fairly recent. The applicant has offered screening and to close the Pennsylvania openings. I do not like rezoning the "B" zoned lot to "LC", when the applicant is not requesting that, I don't think this is what this Commission should be doing. I will not be able to support the motion.

BARFIELD In making this entire site "LC", I think it will certainly make it more desirable and marketable for a potential buyer than it is right now.

DUNLAP I agree that it should be "LC" but I disagree that we should do it without the owner's request. The owner is not here and is not requesting it, and I do not think that is something that we ought to impose on the owner.

HENTZEN I'd like to ask Dale, could we recommend zoning the little strip "LC", so that it is all common, with a Protective Overlay allowing the sales lot and the car body and paint shop?

MILLER In order to do the auto body shop you would have to have "GC" zoning, they can't do it in "LC" zoning.

HENTZEN I understand that, but can we do it with an overlay?

MILLER One of the options that was presented was to rezone to "GC" but limit it to auto body and the car sales as the only two "GC" uses, and then all other "LC" uses.

LONGNECKER That was Option #1 on the DAB memo, which is to rezone everything "GC" but allow only the car sales and the body and paint work as the only "GC" uses allowed on the property.

DUNLAP But that's not the motion.

HENTZEN That is just picking out some land on 13<sup>th</sup> Street and making it "GC" as opposed to everything around it as "LC".

LONGNECKER That would be correct. We would be introducing a new zoning.

HENTZEN Is there anyway to leave it "LC"?

MILLER No.

LONGNECKER We can't because a Conditional Use is similar to a Protective Overlay in that the zoning doesn't change but you are looking at a use that could be appropriate for that site, an auto body and paint shop is not a Conditional Use consideration for "LC" zoning.

BISHOP I'd like to comment. Why we would recommend rezoning the small strip of "B" there, and the purpose of the motion to not approve the "GC" and deny the placement there of a body shop and used car sales, is to leave it open for the possibility of development of something that would be better for the neighborhood. I see rezoning as simply good planning.

DUNLAP I agree with you. I totally disagree with you on imposing that zoning on an owner that is not here and has not requested it.

BARFIELD I can't fathom the idea that the owner of this property would be opposed to anything that would make his property more marketable to selling.

DUNLAP I think you are probably right, but you are making an assumption that it will in his mind, and you don't know that.

BARFIELD They have said nothing about how many employees they would have.

**MOTION fails vote 3-6. (BISHOP, BARFIELD, DOWNING in favor)**

**MOTION:** Approve Option 1) The applicant's revised request; Rezone all the lots "GC" with a protective overlay to allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted "GC" uses. The applicant would also enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts a Legion Hall and on its east and west sides where it is adjacent to residential zoning. The applicant would also close the entrances onto the site from Pennsylvania Avenue.

**WARNER moved, MITCHELL seconded the motion.**

KNEBEL Restates motion Option 1, which is a zone change to "GC" General Commercial with a Protective Overlay.

BARFIELD We have a DAB vote of 8-0 to deny the "GC" zoning, we have staff recommending denial of "GC" zoning, and I cannot support the motion for the "GC" zoning.

**MOTION carried 6-3 (BISHOP, DOWNING, BARFIELD, opposed).**

7. **Case No.: CON2005-01** – R.R.M. Properties, L.L.C. (contract operator), City of Wichita (property owner) Chuck Hill (agent) Request Amendment to Conditional Use (CON2003-51) to extend the deadline for operation of a C & D landfill to cease from April 1, 2005 to December 31, 2010 on property described as;

That part of Government Lot 1, in Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T. & S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1/4 of said Section 10, with the west right-of-way line of said A.T. & S.F. Railroad; thence west along the north line of said NE 1/4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1/4; thence east parallel with the north line of said NE 1/4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T. & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1/4 of Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly Right-of-Way line of the A.T. & S.F. Railroad N 89 degrees 47' W 1526.15 feet and S 37 degrees 31' East 859.98 feet from the Northeast corner of the said NE 1/4 of said Section 10; thence along said westerly Right-of-Way line S 37 degrees 31' East 1499.21 feet to the east line of said NE 1/4; thence along said east line S 02 degrees 46' West 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances North 26 degrees 46' West 46.59 feet, North 13 degrees 15' West 213.50 feet, North 43 degrees 01' West 349.10 feet, North 28 degrees 53' West 472.42 feet, North 49 degrees 23' West 417.83 feet, South 25 degrees 00' West 138.42 feet, South 76 degrees 24' West 96.58 feet, North 31 degrees 05' West 209.45 feet, North 05 degrees 10' West 194.00 feet, North 47 degrees 00' West 25.48 feet; thence South 89 degrees 47' East 248.34 feet to the point of beginning. TOGETHER WITH those portions of Government Lots 1 and 2 of Section 11, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from The Burlington Northern and Santa Fe Railway Company's (formerly The Atchison, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence North 80 degrees 00' West, 137.6 feet; thence North 05 degrees 15' West, 60.25 feet; thence West to the left bank of the Arkansas River. Generally located South of 31<sup>st</sup> Street South and west of K-15.

**BACKGROUND:** The applicant is seeking an extension from the current deadline of April 1, 2005 to complete and halt construction and demolition (C&D) landfill operations to December 31, 2010. On March 2, 2004, the Wichita City Council established the April 1, 2005 deadline with case number CON2003-51. The application area is located south of 31<sup>st</sup> Street South and west of Highway K-15, and encompasses 26.14 acres. The property is zoned "LI" Limited Industrial, subject to conditions contained in CON2003-00051. Access to the site is a driveway to Highway K-15. The site generates approximately 25 to 30 vehicle trips per day. The property is owned by the City of Wichita and leased to the applicant. When landfill operations cease it is expected the site will be redeveloped into a park. By a separate lease agreement, the applicant is required to fill and level the site consistent with a site plan contained in the lease agreement whenever landfill operations cease. The lease agreement expires on April 1, 2005. However, the lease is automatically extended with any time extensions to the conditional use permit.

The applicant is required to have a C&D permit issued by the Kansas Department of Health and Environment (KDHE). Cornejo & Sons, Inc. was granted a solid waste disposal permit by KDHE on January 26, 1999, conditioned upon the grant of a conditional use by the City of Wichita (which was approved in February 1997 as CU-425). The City of Wichita conditional use permit (CU-425) expired initially on April 1, 2003, but was extended by the City Council to April 1, 2004 (CON2002-37). KDHE denied a renewal of the 1999 C&D permit on January 9, 2004, on the basis that KSA 65-3407(l)(1) prohibited the location of a landfill within 1/2 mile of a navigable stream. KDHE also ruled that the initial (1999) C&D permit had been issued in error because of its proximity to a stream designated as navigable, the Arkansas River. Cornejo & Sons appealed the permit denial to District Court. In November 2004, a District Court opinion was filed, finding that the "navigable stream" prohibition did not apply, and remanded the matter back to KDHE. KDHE has asked for reconsideration of the Court's opinion, and the status of the KDHE permit has not been finalized. The applicant estimates filling is approximately 60% complete after five plus years of operation. The site is open and operational today based upon court actions sought by the applicant.

Each conditional use application has been accompanied by expressions of concern by interested parties citing concerns with potential pollution from the landfill to the river, increased truck traffic, noise and dust. The applicant has attempted to address these concerns by inspecting the debris brought to the site, planting landscaping and watering roadways.

The majority of the land west of K-15 Highway, and north of the landfill site is zoned "LI" Limited Industrial, and is currently used for construction activities. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned "SF-5" Single-family Residential, and a mobile home park (at the southeast corner of 31<sup>st</sup> street and K-15) located on property zoned "LC" Limited Commercial. Several commercial uses are located at the northeast corner of 31<sup>st</sup> Street and K-15 on property zoned "LC." Areas south of the landfill are undeveloped and zoned "LI."

**CASE HISTORY:** CU-425, approved in February 1997, allowed the establishment of the C&D landfill, subject to conditions, and included the initial closure date of April 1, 2003. CON2002-37, granted in 2002, extended the deadline for closure to April 1, 2004. The applicant stated that, in part, they needed the time extension due to the nearly two years that were lost between the City's initially conditional use permit approval in 1997 and KDHE permit approval in 1999. CON2003-51 extended the deadline to April 1, 2005.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LI" Limited Industrial; construction and industrial uses

SOUTH: "LI" Limited Industrial; undeveloped  
EAST: "LI" Limited Industrial, "SF-5" Single-family Residential; K-15 Highway and residences  
WEST: "LI" Limited Industrial; Arkansas River, Wastewater Treatment Plant

**PUBLIC SERVICES:** The site has access to K-15 Highway, a four-lane expressway. Municipal sewer and water services are not necessary for this use.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The City and State have recognized the impact of pollution on the Arkansas River and its subsequent spread through the river's area as potentially detrimental to the public health and environment. The Arkansas River has traditionally had a status as a "navigable stream used for interstate commerce," under landfill regulations and other statutory and judicial interpretations. Regardless of the ultimate judicial or legislative determination of the status of the Arkansas River, the recognition and concern for the environment through both regulations and environmental criteria have been acknowledged by the City and the State by opposing the establishment of a different C&D landfill located east of West Street and south of 37<sup>th</sup> Street North (CON2000-52) because of its proximity to the Arkansas River. Additionally, previous City Councils have declined, on two separate occasions, to extend C&D operations on this site to 2010, instead they have granted two separate one-year extensions.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the conditions listed below, including all applicable KDHE permits. Condition C has been amended to state: "The deposit of material on site shall cease by December 31, 2010."

- A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et. seq. shall not be permitted for disposal at the site.
- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill shall not be open to the general public. The landfill shall only be open to solid waste collection vehicles licensed under Chapter 7.08 of the Code of the City of Wichita. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for authorization, inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.
- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected within 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross-section. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.
- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.
- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health

Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.

- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall display the following message in 4 inch or larger letters that contrast with the background:

NO TRESPASSING – NOT A PUBLIC FACILITY

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT VEHICLES. GARBAGE, HAZARDOUS WASTE, AND MATERIAL TRANSPORTED BY PRIVATE OR UNLICENSED VEHICLES IS NOT ALLOWED. LANDFILL OPERATES 7:00 AM TO 6:00 PM MONDAY THROUGH SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.
- O. The applicant shall pave the 31<sup>st</sup> Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.
- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.
- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this conditional use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The majority of the land west of K-15 is zoned "LI" Limited Industrial, which allows a wide variety of office, commercial and industrial uses. The Arkansas River abuts the site immediately to the west, with the City's wastewater treatment plant west of the river. Property east of K-15 is zoned "SF-5" Single-family Residential and "LC" Limited Commercial, and developed with site-built and manufactured home residences and commercial uses. Immediately east of the application is a sliver of land zoned "LI" owned by the applicant, then a set of railroad tracks followed by K-15 Highway. Taken together – K-15 Highway, the other existing construction related uses and the wastewater treatment plant – the character of the area west of K-15 is that of a typical industrial corridor.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial with a Conditional Use permit that allows for a C&D landfill, subject to the conditions contained in CON2003-51. If this request is not approved, C&D activities could likely occur until the April 1, 2005 deadline. After April 1, 2005, the use of the site would be restricted, by zoning, to those uses permitted in the "LI" district; whatever geo-technical limitations the site would have given the fact that the site has had C&D fill materials deposited on the site (e.g. typical construction of permanent buildings may be ill advised due to the potential for the site to settle due to the filling); and the contractual agreement between the City and the operator requiring him to fill and grade the site to the standards contained in the lease agreement. It is staff's understanding that it is not desirable or appropriate to place permanent buildings on fill sites due to settling. Thus, use of this site would be restricted to open outdoor uses, which includes parkland and filling activities. On three different occasions the governing body has approved C&D activities on this site so it would seem that the site is suitably zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Assuming the operator can retain appropriate KDHE permits, approval of the request would simply allow the site to continue to be used as a C&D landfill until December 31, 2010, instead of ceasing C&D activities on April 1, 2005. The site is already being used for C&D activities, and has been since about 1999 so whatever detrimental affects nearby property owners are experiencing now would presumably continue until operations cease. Typical complaints included: increased truck traffic, noise and dust. The operator has attempted to address neighborhood complaints as outlined above. Denial of this request would return the property to its base "LI" zoning, and the property would be available for other appropriate uses, including a park.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If denied, the hardship imposed on the applicant is economic. The applicant was aware of the initial deadline, and the Council has already granted extensions equivalent to the delay the applicant experienced between the City's approval of CU-425 in 1997 and the issuance of the KDHE permit in 1999. Clearly, given the site's proximity to the river, it is an environmentally sensitive location, and if not properly managed could present a potentially negative impact to the



public health, safety and welfare. To date, there has not been any evidence that C&D activities at this location are polluting the river. If properly managed and completed as intended, the closed C&D landfill will benefit the public's welfare in the form of new open space and parkland. Approval of the request would ensure a C&D landfill location for the southern portion of the city, which should help to reduce illegal dumping.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services, and be provided with good access to major arterials, and should be extensions of existing industrial uses. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The City and State have recognized the impact of pollution on the Arkansas River and its subsequent spread through the river's area as potentially detrimental to the public health and environment. The Arkansas River has traditionally had a status as a "navigable stream used for interstate commerce," under landfill regulations and other statutory and judicial interpretations. Regardless of the ultimate judicial or legislative determination of the status of the Arkansas River, the recognition and concern for the environment through both regulations and environmental criteria have been acknowledged by the City and the State by opposing the establishment of a different C&D landfill located east of West Street and south of 37<sup>th</sup> Street North (CON2000-52) because of its proximity to the Arkansas River. Additionally, previous City Councils have declined, on two separate occasions, to extend C&D operations on this site to 2010, instead they have granted two separate one-year extensions.
6. Impact of the proposed development on community facilities: There are at least two other C&D landfills that staff is aware of; both of them are located in the northwestern quadrant of the city, one of which is operated by the City of Wichita. Approval of this request would allow this use to continue to serve the southern portion of the city, and provide market choices for the City and County. Denial would force users of this site to travel to other locations that are probably further away, increasing disposal costs and adding to cross-city traffic volumes.
7. Neighborhood support or opposition. There has been significant neighborhood opposition to earlier requests. Over 47 protest petitions were filed objecting to the initial application, CU-425. Twenty-six property owners filed protests for CON2002-37. No written protests were received for CON2003-51.

DALE MILLER Planning staff presented the staff report.

BISHOP Mr. Miller, you have sort of explained the reasons for the recommendations in your staff report but if you look at conformance to plans/policies, just as part of it, and you read that, it is counterintuitive. So in other words, the recommendation for approval is just because you didn't want to buck City Council?

MILLER I think you can look at the conditions for where industrial uses should be located, and they say they should be near support services, and provide good access to major arterials, and be an extension of existing industrial uses. The City's Waste Water treatment plant is here (pointing to the map), and all this is "LI" used property, and the site is already zoned "LI," and has been for many, many, years. The Conditional Use is located adjacent to K-15; that is an arterial street that provides convenient access to the transportation system. So from that standpoint you could argue that it meets many of the criteria for this type of use. As indicated, the Land Use Plan does not specifically call out guidelines for landfills. Obviously, if you were picking a site you wouldn't pick a site next to a river, generally speaking, but based on the location criteria for industrial uses it does meet many of those.

BARFIELD You said the reasons that you are changing your position from denial to approval is because it has been approved the last two times by the City Council. Based on your last reply nothing has changed, so for you to justify your position then it would indicate to me that your position of approval should have been the last two times.

MILLER I can see how you can make that argument.

BARFIELD I don't like the idea of staff shaping its position based on the action of City Council. I think it is the job of staff to go out and do fact-finding, and see how these proposals and these applications fit into the zoning patterns, and the Comprehensive Plan, and make their recommendations based on that, and I don't think that is what you are saying you did here.

MILLER I would say that staff recommended approval for the initial application for this landfill, so we are being consistent with the original application.

BARFIELD Last year the recommendation was denial.

MILLER That is true.

BARFIELD What I interpret you saying is that your changing your recommending is not based on any changes here that would justify approving this now. Your recommendation is based on the last two actions by the City Council. Is that what I am hearing you say is driving your recommendation here today?

MILLER Part of what is driving the recommendation of approval is the fact that it is 60-65% full, and it is an operation that is in midstream. In terms of the earlier applications, they were still in the early and initial phases of filling the site. Staff feels like, at this point, this type of activity is not something you can stop halfway through and then you have something that is useable. Once you start, if you don't stop fairly soon, then you need to finish it in order to have something that is useful. So that is what I would suggest is different this year as opposed to the previous two years. They are over halfway full. The Council's actions obviously have an impact, and it would be staff impression that by the approvals that have been granted on the last two different occasions for extensions, and by the Councils initial approval, that there is, if not a policy decision, then certainly there is a direction that has been shown to staff that the elected officials are interested in seeing this site finished up.

BARFIELD This is for a five-year extension?

MILLER That is true. Staff thought about that, and we even discussed if there was something in between, do another year or maybe another two years. We felt like at this point, given where they were with the 60-65 percent, it didn't make any sense to do something less than giving them an opportunity to finish up and be done with it.

WARNER Do we have any idea when, under the present use, when it's going to be full? Have they done two years and gotten 60-65% full?

MILLER I would say that it is approximately five years now. It was approved in 1997 and they actually started filling in late 1999 or 2000.

WARNER As far as staff approval, I think this board is the one that makes the decisions, and we have done some things that the staff has either approved or recommended approval or denial, so whether they recommend approval or denial doesn't necessarily make any difference as far as how this board votes.

BARFIELD I understand your point, but what I was questioning is the reason for the flip-flop. Last year they recommended denial, and there is no basic change in this project, and that is what I am alluding to.

HENTZEN I just want to emphasize the importance of having the C & D down there. I have been in the contracting business and the remodeling business, and we have to haul a lot of C & D stuff, and as far as I know, if this one was closed, we would have to go how many miles way up north. I just want to tell you, I hope they don't shut this operation down.

MITCHELL One clarification; you said that there is just this one in the south part of the city and I think that is true for the county in this area also.

MILLER We were not aware of any others in the county, in the southern end, but there could be; but we are not aware of that. I would remind you that the District Advisory Board recommendation is at your seat today, and they did recommend unanimously to deny the extension.

DUNLAP Dale, you mentioned the word "expansion", and I think that only applies to the time frame, is that right?

MILLER Correct, just an extension of time, not the physical expansion of the operation.

WARNER Does that mean they don't come back every year?

MILLER If it is approved to 2010, one would hope they would be through by then.

DUNLAP Our procedure now would be to hear from the applicant, and they will have 10 minutes to present their case, and then we will hear from the people who are not in favor, and the applicant will have rebuttal after that.

CHUCK HILL with CORNEJO & SONS APPLICANT Most of you have been here the last two years when we have presented this item, and I don't want to cover a bunch of old ground, but I do want to take you back a little bit to how we got to where we are.

We started negotiating with the City in about 1996 to lease this property that was known as the Boeing Hills site at that time, and it had been used for a number of years for depositing sludge from the sewage treatment plant that was just dumped on the ground in that area. Now at the time of the initial application we were estimating that it would take 10 operating years to complete this landfill, and to fill it up. At that time the MAPD staff, which recommended the approval of the application, did recommend a time limit of April 1, 2007.

In February 1997, when we filed this application, the Brooks Landfill did not have a separate C & D landfill. Brooks was just a municipal solid waste landfill, and at that time they were trying to discourage yard waste and discourage C & D waste because they were wanting to extend the life of that facility as long as they could for municipal solid waste. Since that time, and I think in 1997 there was one other C & D landfill located near Derby, which has now been closed by the operator or KDHE. Because we were going to be the only separate C & D landfill operating down there, we were optimistic in our projections of how long it would take to fill that area. When asked is it really going to take 10 years, I think it was stated that, no we don't think it will take that long, and based on that the Planning Commission recommended that the operation cease in six years, which was April of 2003.

Since that time, the City has opened its own C & D landfill at the Brooks Landfill and the Ritchie Company opened a landfill just across K-96 to the south, which is pretty much adjacent to the Brooks Landfill. As you might imagine with those additional sites that has somewhat reduced the rate of fill of our landfill. I would also like to remind you that in looking through minutes regarding landfills, particularly the Ritchie landfill cases, we have been unable to find any other case where there was a time limit for the operation imposed by the Conditional Use permit, so this is kind of a unique circumstance.

Obtaining the Conditional Use permit was the first step to open that landfill. As you know, we couldn't even go to KDHE with an application until we had the Conditional Use. We started that right away but it took about 20 months to get that application approved, and permitted through KDHE. I think we got the license in late November of 1998, and we were then able to begin operating in the spring of 1999, which meant that instead of the six years in the Conditional Use permit to actively operate and fill this site we were down to four years.

Then we got into the issue with KDHE over the location and the proximity to the river, and I just want to bring you up to date on where that's at. At the time we filed our original application for a permit, the statute was in place that said, "you can't have a landfill within 1/2 mile of a navigable stream used for interstate commerce." That is a phrase that we have been told doesn't appear

anywhere else in the law. It is a unique phrase, which was put into this landfill statute. Now KDHE, at that time or shortly thereafter, adopted regulations to cover municipal solid waste landfills and hazardous waste landfills; they didn't do anything in terms of adopting specific regulations for C & D landfills. But when they did their municipal solid waste, their big landfill regulations, they said OK we are going to interpret that phrase to mean a navigable stream as defined by a specific section of the federal regulations as interpreted by the Corps of Engineers. Everybody has always agreed that if applied that Corps of Engineers' section that is required by that regulations, the Arkansas River is not, and has never has been a navigable stream in the State of Kansas.

That was the definition that KDHE used in 1998 when they approved our permit, and that regulation is still in effect today. But for some reason in 2002, when we only had one year left in our Conditional Use permit, which was then built into our KDHE permit, KDHE changed its mind. They said we still have regulations on the books but we are not going to follow it, and we are not going to apply it to a C & D landfill. We said that is wrong, that you can't do that. For the last two years we have been up here telling you that it is our opinion that what KDHE did was wrong, and that is all we had, but that was our opinion. Now we have a District Court decision, which has told KDHE that you can't do that. You can't change the rules in the middle of the game, and the only definition that you have ever adopted is this one that is on the books, and you can't change it to apply to this landfill. So we now have an order from the District Court that says to KDHE that you can't deny their request for an extension of time based on the fact that they are located within a 1/2 mile of the Arkansas River.

Let's talk about the facts that are relevant to this application. Number one, we have never been cited by the City of Wichita for any violation of our Conditional Use permit that we have had since 1997, and Code Enforcement, I am sure, is looking to make sure that we comply with that permit. Number two, our landfill is inspected once every week by the Sedgwick County Environmental Resources Department, and we have continually passed each and every one of those inspections without any problems. Number three, in 6-1/2 years of operations there has been only one instance of when KDHE alleged that we violated the C & D landfill regulations, and that arose from a misunderstanding as to whether we could screen the waste and pick out inappropriate items while they were on the face of the landfill, or whether we had to dump them out on top and screen them first before we pushed them over the side of the face. That issue was resolved. We modified our operation, and we have had no complaints from KDHE since. Number four, there are four groundwater-monitoring wells around this landfill site, and it is sampled on a regular basis, and those test results are sent to KDHE, to the County Health Department and to the City. There has never been any indication from any of those water samples that we have done anything toward polluting the groundwater in that area. Number five, of all the various agencies that are concerned about protecting the river and the cleanness of the river, and any damage to the river, and since 1997 when we started this project, we have never had any contact from any agency state, federal or local alleging that we are polluting or damaging the Arkansas River.

We have tried very hard to be the best neighbor that a landfill can be, and at the same time we understand that no matter where we put it, or how well we operate it, there will always be neighbors who say they don't want it in their backyard, and we understand that. However, in 1997 this Commission determined that the use of this land, and it is a unique piece of land, for a C & D landfill operation was appropriate subject to certain conditions, and all of those conditions are going to remain in effect. All we want is the time to complete the original plan, and to bring it to the originally designed fill levels, and we submit to you that on the basis of the criteria that you have to apply in determining a zoning case that this application merits your approval.

DOWNING Mr. Hill, can you show us where the sample wells are located, and specifically how often are they tested.

HILL I do not know where they are. Mr. Cornejo is here today, maybe he recalls.

RON CORNEJO There are four sampling wells. (He indicates on the map where the wells are.)

TAPE CHANGE

DOWNING How often are those tested?

CORNEJO They are tested every six months.

MITCHELL Who designed the layout for those wells?

CORNEJO I believe that was designed by Mr. Fisher with the City/County Health Department.

DUNLAP Any other questions for the applicant? Seeing none you will have some rebuttal time later. For those of you that now wish to speak in opposition of this we want to hear all of you, and what we would ask is that you don't repeat what other people have said, and be as concise as you can.

ROSEMARY LYNCH, 3200 SE BOULEVARD, LOT #54, WICHITA KS 67216 This is at the corner of 31<sup>st</sup> and Southeast Blvd. I have lived at this location since 1991. I have been the manager of K & R Mobile Home and RV Park, which is located directly across the K-15 highway from this landfill. Since the opening of this construction and demolition landfill, at South 31<sup>st</sup> Street and K-15 highway, in 1997, there has been dust, dirt, and trash that have been blowing over the mobile home park. The direction of the wind is usually from the southwest so it blows all of this dust, dirt and trash from the landfill over the whole neighborhood. The dust also gets all over everything in the office including the desks, computers, printers, and other office equipment. All kinds of trash blows out of this landfill, across the highway and all over the mobile home park and the neighborhood. The landfill company put a fence up in 2004, which has helped a bit, but debris still blows over the neighborhood. There has also been an increase in rodents ever since the landfill opened. We never saw anything like this before the opening of the landfill. We respectfully request that the planning commission recommend denial of this request.

MITCHELL Have you made any official complaints to the city or county organizations?

LYNCH Yes, I have called several of times. I have even called Mr. Cornejo. When my husband was alive, when this first started, he called Mr. Cornejo himself and said "Ron you said you were going to be a good neighbor. I am breathing dust, and I am on oxygen." If I call Cornejo they don't log it, and if I call City Hall they don't know who to give it to. I have called a lot of people.

GARY RUEDEBUSCH 3200 SE BOULEVARD, LOT #54, WICHITA KS 67216 I own the mobile home park at K-15 and 31<sup>st</sup> Street. If their property extends all the way down to here I have a very hard time believing that they are at 65% full. I got to say I would like to say it is 30-35% full, but if that is the case we will have a bigger problem with dust and debris because of the way this sits. It will probably be until 2015 because they have a long way to go. I went over there today and I can't see the fence on the northeast side of your property? I don't believe there is and if there was it would help. That was one of the conditions that the Zoning Administrator was going to require, if necessary. If he was a good neighbor he would have put a chain link fence there, and the second thing he could have done was put in a decel lane because we get these big trucks going in and out of there all day long so we get dust and mud on the street, but quite often you will see that on the road. I think those are the main problems.

JOHN KEMP, 3000 DUNHAM, WICHITA KS 67216 Past President and Founder of the K-15 Neighborhood Association My wife and I have lived at this location for 19 years. This landfill, ever since it started in 1997, has totally disrupted our lives and the lives of our neighbors. Personally, my wife and I have experienced dust, truck traffic, trash blowing into our yard, increased rodent populations and other problems that we never experienced before 1997. The prevailing wind blows from the southwest. Therefore, whenever the wind blows, which is often in Kansas, we get dust, dirt, and trash blown all over our neighborhood. The fact is that this landfill has been and continues to be incompatible with the residential neighborhood that lies to its north and east. The only solution is for this landfill to cease operation. We are asking you and begging you for the sake of our health and quality of life to recommend to the Wichita City Council that they deny another extension of this Conditional Use permit. Many people in our neighborhood are on oxygen.

CHARLES M. BENJAMIN, P O Box 1642, LAWRENCE KS 66044-8642 I am an attorney and I represent the K-15 Neighborhood Association. I appeared before you last year when this body was considering an extension of the Conditional Use permit for this C & D landfill. I simply want to point out to you the inconsistency in the staff recommendation this year versus last year. The staff recommended denial of an extension of the Conditional Use permit last year. I have enclosed for your information the staff report and excerpt from the minutes of last years Planning Commission meeting.

The judge did not order KDHE to issue the permit. What the judge found in his order was that KDHE was arbitrary in its interpretation of the statute. Mr. Hill gave you some of the reasons as to why that is the case. It is our opinion that a District Court judge cannot order an executive branch agency to issue a permit to anybody, ever, for any type of landfill. It is the agency's discretion.

Mr. Hill stated that no agency has ever contacted Cornejo saying that his landfill was a problem. There were two state agencies that were asked for their opinion in 1997. They were the Kansas Department of Wildlife and Parks and the Kansas Biological Survey, and they both objected to a landfill at this site in the Arkansas River because it will change what they call the morphology of the river.

It is an insult for Mr. Hill to trivialize the concerns of the neighbors. Look again. The neighborhood is here. The winds blow this way so these neighbors have continued to experience noise, dust, and dirt and stuff blowing out of the landfill over their neighborhood. This is the wrong location for a C & D landfill. A landfill at this location is incompatible with the residential area that was there first. I can't believe the City Council would impose this on their own constituents. I would encourage you to deny this extension.

MITCHELL Mr. Benjamin have you filed any official complaints with the City of the County?

BENJAMIN I don't know what you mean by legal complaints. We have stated our opposition at numerous hearings where this has come up for many years. I have been employed by the Sierra Club for about nine years now. But let me say something about that, when people complain and nothing happens they give up. When the City Council seems to be a promoter of this, and they complain and nothing happens they give up. These are working class people. They are not wealthy people. They are not necessarily schooled in how to make complaints and make formal things in writing. But you need to listen to them, unless you have experienced this or seen what they are going through.

RON CORNEJO I will try and cover some of the concerns of the neighbors. First of all, how full is the landfill? We are about 60-65% full. We have tried to be good neighbors. I have tried to work with Mr. Kemp in years past. An issue came up this time was the rodents, and we have never had a rodent issue before. Typically rodents are attracted to areas with no activity. Joyland Park is adjacent to him and there is trash down there, and nobody says anything about it. The railroad came through about four years ago and replaced all of the ties, and left them laying on K-15, and nobody said anything about it. We run a very clean operation. I would ask any of you to go by any of the C & D landfills and compare them to ours. We do wet down the property. We do create dust. I also have a rock crushing operation adjacent to this, and it is probably just as guilty as the landfill at generating some dust but we do try and contain it. I don't know where I can put a landfill that I won't have some opposition. I try to be a good neighbor. Prior to us starting this it was known as the Boeing Hills, and it was primarily used as a motocross track. There was dust, and dirt because the motorcycles wore all the grass off and we have clean all that up. We have a few paintballers that we are dealing with and that is it.

MITCHELL Mr. Cornejo, staff comments list several items under recommendations, are you agreeable to all of them?

CORNEJO I don't believe any of them have changed from anything in the past, and we are agreeable to them.

HENTZEN Who owns that property?

CORNEJO The City owns the majority of the property. We own pieces of it, and our Conditional Use or our agreement with the City was that when we complete the operation we deed all the property over to the City of Wichita. There is a piece of property there that is fairly unsightly and it is owned by a company called Brad burn Wrecking that sits right in the middle of everything, and there are people who confuse that with our operation but that is not ours.

BARFIELD I believe Mr. Hill alluded to the fact due to the opening of two northern dumps in Wichita that it has kept you from progressing at what you had previously thought you would be able to do, would that then allow for the possibility that you might not be able to fill this in by 2010?

CORNEJO I don't see us having a problem to fill this by 2010. We will finish by then because I will not come back to you again.

DUNLAP Has there been an expansion of the size since it was permitted the last time?

CORNEJO No.

DUNLAP Is there a fence?

CORNEJO We have temporary fences. They are on skids and we move them around depending on the winds.

DUNLAP Several years ago, not relating to this case, there was a charge that there was some household waste that got in by mistake. Have you had that recently?

CORNEJO That was the issue that we had with KDHE. We have to have what is called a screening area. Everything that comes into a C & D landfill; we are actually more restrictive than a municipal solid waste landfill in that we can't let any containers in, calking tubes, any kind of thing that can be construed as hazardous. So we take everything that comes in and it is scattered out, and you pick through it, and we take all those containers out. There was an interpretation between how we did it and how KDHE said we should do it. That has been worked out and resolved, and we haven't had any problem with it since.

BARFIELD I think the conditions stipulate that you have to have all of the permits. Do you have a KDHE permit today?

CORNEJO We are operating on a stay, until the appeal process.... We actually won at the court level but KDHE has appealed that. We do have a permission to operate from KDHE. Should we not win, the landfill will cease immediately.

DUNLAP We will restrict the comments to the Planning Commission now.

**MOTION:** Take the staff recommendation, and that the landfill be approved with Condition C setting the date of December 31, 2010.

**MITCHELL** moved, **MCKAY** seconded the motion.

**SUBSTITUTE MOTION:** That we deny the Conditional Use.

**BISHOP** moved, **BARFIELD** seconded the motion.

BISHOP I have voted against this every time this has come before the MAPC, and I think that I am not against C & D landfills. They are needed but I think that is a terrible location for one. I think there are serious environmental issues, and to put that right next to a residential neighborhood, if it is not in opposition to the Environmental Justice Act simply because there is no federal funding involved, it is certainly in opposition to the spirit of it.

**SUBSTITUTE MOTION** fails, vote 2-7. (**BISHOP, BARFIELD** in favor)

**ORIGINAL MOTION** carries, vote 7-2. (**BISHOP, BARFIELD** opposed)

8. **Case No.: ZON2004-69** – Laham Holding Company, LLC c/o George Laham (owner/applicant); PEC c/o Rob Hartman (agent) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "LI" Limited Industrial on property described as;

Parcel 1: A tract in the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southwest corner of said Northwest Quarter, thence East 223 feet; thence North 150 feet; thence West 223 feet; thence South 150 feet to the point of beginning, except the West 50 feet thereof.

Parcel 2: That part of the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning 150 feet North of the Southwest corner thereof; thence North along the West line of said Northwest Quarter 7.0 feet; thence East parallel with the South line of said Northwest Quarter, 223.0 feet; thence South parallel with the West line of said Northwest Quarter, 7.0 feet; thence West parallel with the South line of said Northwest Quarter, 223.0 feet to the point of beginning, except the West 50 feet thereof. Generally located on the northeast side of K-96 and Greenwich Road.

**BACKGROUND:** The applicant requests a zone change for 0.6 acres located north of Kellogg and east of Greenwich from "SF-20" Single Family to "LI" Limited Industrial. The subject property is currently developed with a single-family residence. The applicant owns approximately 26 acres that is located southeast of the subject property that was approved for "LI" Limited Industrial zoning subject to platting and Protective Overlay District #86 in 2001. The plat of the applicant's other property has not been completed; therefore, the "LI" zoning is still pending. The applicant has requested "LI" zoning for the subject property so that it may be joined in unified zoning with the remainder of the applicant's ownership.

The character of the surrounding area is that of a developing commercial and industrial area located at a freeway interchange. Most of the property in the vicinity is still undeveloped. The properties to the north, south, and east are undeveloped and are zoned "SF-20" Single Family, but have been approved for "LI" Limited Industrial zoning pending platting. The properties to the west across Greenwich are zoned "LI" Limited Industrial and are developing with various industrial uses.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Undeveloped  
SOUTH: "SF-20" Undeveloped  
EAST: "SF-20" Undeveloped  
WEST: "LI" Limited Industrial

**PUBLIC SERVICES:** The subject property has access to Greenwich, a two-lane arterial street. Current traffic volumes are not available for this stretch of Greenwich. The 2030 Transportation Plan recommends that Greenwich remain a two-lane arterial street in this location. However, the extent of industrial zoning approved along this stretch of Greenwich is a significant change from what was anticipated in the 2030 Transportation Plan; therefore, the traffic impacts from development of the site and surrounding industrial properties likely will require widening of Greenwich and signalization improvements, which will be determined through platting and/or a traffic study. All normal municipal services are available to be extended to the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial sites should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial areas. The request conforms with the Land Use Guide and the Industrial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting within one year and the following provisions of a Protective Overlay District:

1. Uses: All uses permitted in the "LI" zoning district except that an asphalt or concrete plant, limited, will not be permitted. Should there be a need for more than 100,000 square feet of floor area of non-"IP" uses, a traffic study will then be completed. The maximum square footage of non-"IP" uses may be increased to 300,000 square feet by an adjustment. The City Traffic Engineer may require that additional traffic improvements be guaranteed to support this traffic volume. The total average daily traffic generated by the uses within this property shall not exceed 8,000 ADT.
2. The transfer of the title on all or any portion of the land included in the development does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owners, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions in this overlay, consistent with the approved development plan, without filing a formal amendment.
3. Minimum setback requirements for all front setbacks will be 25 feet, rear-25 feet, interior side-15 feet, and street side yard-35 feet.
4. Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownership's within and abutting the property.
5. Height: 55 feet maximum height for all structures.
6. Signs: All signs along Greenwich and K-96 shall be limited to the standards for the "IP" district in the City of Wichita's sign code. No signs with rotating or flashing lights shall be permitted, nor shall any portable signs or off-site signs be permitted.
7. Access: Based upon a previous agreement with KDOT and Sedgwick County's Public Works Department, there will be complete access control along the western perimeter of the application area. Access will need to be provided to the application area from the 159-acre tract to the north.
8. No building permits shall be issued for any development without municipal water and sewer service.
9. Cross-lot circulation is to be provided for all lots developed for retail, commercial or office uses, through the approval of site plans by the Director of Planning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of a developing commercial and industrial area located at a freeway interchange. All of the surrounding properties are currently zoned "LI" or have been approved for "LI" zoning. The request is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-20" Single Family and is currently developed with a single-family residence; however, all the surrounding properties are developing with or are proposed for industrial uses. Therefore, the most suitable use of the subject property is for it to be combined with surrounding properties and used for industrial purposes.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional zoning restrictions of the recommended Protective Overlay District should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial sites should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial areas. The request conforms with the Land Use Guide and the Industrial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Detrimental impacts on community facilities will be mitigated through improvements required by a plat and/or traffic study.

DUNLAP Anyone here from the public to speak on this Item?

**MOTION:** To approve subject to staff recommendation.

**MITCHELL** moved, **JOHNSON** seconded the motion, and it carried (9-0).

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9. **Case No.: CON2004-46** – John Mannebach Request Sedgwick County Conditional Use to amend CU-533, to allow up to 140 dogs on property described as;

Beginning 853.3 feet North of the Southeast corner of the South Half of the Northeast Quarter of Section 17, Township 26 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence West 466.7 feet; thence North 466.7 feet; thence East 466.7 feet; thence South 466.7 feet to the point of beginning. Generally located West side of 183<sup>rd</sup> Street West, midway between 61<sup>st</sup> Street North and 57<sup>th</sup> Street North.

**BACKGROUND:** The applicant is requesting an amendment to CU-533. This Conditional Use approved a kennel for training, breeding and boarding of 40 dogs (condition "I") on property zoned "RR" Rural Residential. The amendment proposes to allow an additional 100 dogs (thus allowing a total of 140 dogs) on the 5-acre portion of the applicant's property that contains his previously approved training, breeding and boarding kennel. The applicant does not propose to amend any of the other conditions of CU-533. Per the Unified Zoning Code, an approved Conditional Use may be amended by following the same procedures as required for consideration and approval of an original Conditional Use application. The site is located within the applicant's unplatted 80-acre tract, on the west side of 183<sup>rd</sup> Street West, midway between 61<sup>st</sup> Street North and 57<sup>th</sup> Street North. The site is located in Sedgwick County, BoCC District 3, and within the City of Colwich's Area of Zoning Influence. The Colwich Planning Commission considered this amendment to CU-533 at a January 28, 2005 meeting.

The site is located in a rural area supporting agricultural activity and scattered farmsteads, approximately ¾ of a mile northwest of Colwich. The nearest residence is located more than a ¼ of a mile north of the site and is visible from that portion of 183<sup>rd</sup> Street West that fronts the applicant's property. The 5-acres that the applicant has located his kennel on is well buffered by the applicant's total 80-acre property, in regards to putting space between the kennel site and the neighboring western and southern properties and to a lesser extent the abutting northern properties. The 5-acre site's eastern side has frontage on 183<sup>rd</sup> Street West. A large Westar electric utility facility is visible east of the site.

The site plan the applicant has submitted shows the existing kennel building, the applicant's residence and other agricultural accessory buildings. It also shows an additional proposed kennel building that will allow the applicant to board a total of 100 dogs on the site. This proposed 47-foot (x) 104-foot building would have 62 indoor kennels and 5 indoor/outdoor kennels. The design of the proposed kennel will ensure that the additional dogs will be boarded almost entirely within it. The proposed kennel will be a metal building similar to the existing kennel building. The waste generated by the dogs goes to a septic tank that is located in front of the lagoon on the site. The County has stated that this system appears to be fit to handle the additional dogs; the applicant needs to show the location of the septic tank and system on the site plan. The site plan does not show the extensive mature evergreen buffer along the site's south, west and east sides, nor the tree line buffer along the north side of the site. The site plan also does not show the solid wood screening around the existing kennel's 20 outdoor runs or the outdoor runs themselves.

**CASE HISTORY:** CU-533, a Conditional Use for a kennel for training, breeding and boarding of 40 dogs on a 5-acre site zoned "RR" Rural Residential was recommended for approval by the Colwich Planning Commission, August 23, 1999. CU-533 was then approved by the MAPC at their August 26, 1999 meeting. There were no recorded protests to CU-533. County Code Enforcement has not received any complaints about the existing kennel and reports the kennel to be in compliance with the conditions of CU-533. The City of Colwich's Planning Commission considered this request at a January 28, 2005 meeting and recommended approval to amend CU-533 to allow a total of 140 dogs and puppies, the proposed additional facility and the revised site plan. No one protested the request at the meeting.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR" Rural Residential	Agricultural fields Farmsteads,
EAST:	"RR" Rural Residential	Agricultural fields
SOUTH:	"RR" Rural Residential	Agricultural fields
WEST:	"RR" Rural Residential	Agricultural fields

**PUBLIC SERVICES:** The site has access onto 183<sup>rd</sup> Street West, a dirt road maintained by Union Township. The 2030 *Transportation Plan* does not change the status of this road. Well water serves the residence and the existing kennel. The site is outside any Rural Water District. A lagoon serves the residence.

**CONFORMANCE TO PLANS/POLICIES:** The Sedgwick County Development Guide identifies this "RR" zoned property as being outside the 2030 Colwich growth area. The site is within the Colwich area of zoning influence. The *Wichita-Sedgwick County Unified Zoning Code* (UZC) lists "Kennel, Boarding/Breeding/Training" as a Conditional Use in the "RR" district. The UZC's definition of "Kennel, Boarding/Breeding/Training" is "...premises housing over ten adult dogs." The supplementary conditions for CU-533 include a required separation of at least 200 feet from any outdoor kennel facilities to any neighboring residences and 50-foot from adjoining properties. They also require screening of kennel facilities when located within 600 feet of any adjoining property line.

**RECOMMENDATION:** Dog kennels of a 'reasonable size' are appropriate for rural areas of the County and, with certain restrictions, can be compatible with nearby residences and agricultural operations. Reducing the noise from a kennel is a key element in keeping it from becoming a nuisance to the neighborhood, which, in this case, is rural and agricultural. Combining the size, 80-acres, of the applicant's property with locating the additional kennel next to the existing kennel will keep it at least 1,700-feet from any current residences. The supplementary conditions of CU-533, existing landscaping, and the proposed designed of the new kennel making it primarily an indoor boarding kennel is an attempt to allow both the kennel and the neighborhood to co-exist at this location. Based on the information available prior to the public hearing, staff recommends the amendment to CU-533, condition "I", allowing a total of 140 dogs and puppies on the site, be APPROVED subject to supplementary conditions of CU-533 and a revised site plan showing the number of existing and proposed out door runs, existing and proposed landscaping and screening, and the size of the existing and proposed kennel buildings, being approved by the Planning Director, within 3 months.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: Properties surrounding the application area are all zoned "RR" and are used for agriculture with scattered farmsteads giving the area a rural character. Mature existing tree lines and drainage separate uses and property throughout the area. 183<sup>rd</sup> Street West is a dirt Union Township road that is used primarily by local residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which permits large lot residential uses and agricultural uses. The site could continue to be used as a residence with the existing kennel.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise, odors, and traffic generated by the additional 100 dogs could negatively affect nearby residents. Reducing the noise from a kennel is a key element in keeping it from becoming a nuisance to the neighborhood, which, in this case, is a rural one. Combining the size, 80-acres, of the applicant's property with locating the additional facility next to the existing one, the existing landscaping and the supplementary conditions of CU-533 is an attempt to allow both the kennel and the neighborhood to co-exist at this location. These factors should work to minimize negative effects and allow the use to expire if development and maintenance of the Conditional Use are violated.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested amendment to the existing Conditional Use, as proposed, is in conformance with the *Wichita-Sedgwick County Unified Zoning Code* regulations. The Comprehensive Plan does not specifically address dog kennels. The kennel is a commercial development permitted as a Conditional Use in the "RR" zoning district. Locational criteria for commercial development require that they be located adjacent to arterials or major thoroughfares, which provide needed ingress and egress. 183<sup>rd</sup> Street West, at this location is an unimproved section line/Union Township road and not an arterial or major thoroughfare. The site is outside the Colwich growth area, which should minimize the potential for the expanded kennel operation to become a nuisance to future development, as the area is likely to remain rural and agricultural in character.
5. Impact of the proposed development on community facilities: The additional traffic generated by the expanded kennel operations will have a negative impact on the dirt Union Township road, 183<sup>rd</sup> Street West. The time and money required to maintain this portion of 183<sup>rd</sup> Street West will probably increase, although to what extent is not known.

DUNLAP Anyone here from the public to speak on this Item?

BISHOP I have a question on Item 9, what was the response from Colwich Planning Commission?

LONGNECKER On the case history section of the report it notes that the Colwich Planning Commission considered this request and recommended approval to amend CU-533 to allow a total of 140 dogs and puppies, the proposed additional facility and the revised site plan. No one protested the request at the meeting.

**MOTION:** To approve subject to staff recommendation.

**MITCHELL moved, JOHNSON seconded. Carried 9-0.**

10. **Case No.: CUP2005-01** – Wilson Property CUP Amendment #13 Vantage Point Properties, c/o Paul Jackson, President (owner); Professional Engineering Consultants, P.A., c/o Rob Hartman (agent) Request Amendment #13 to DP191 – Wilson Property Community Unit Plan on property described as;



Lot 2, Block A, One Kellogg Place 2nd Addition. Generally located on the south side of 21<sup>st</sup> Street North east of Bradley Fair Parkway.

**BACKGROUND:** The applicant is requesting to amend the gross floor area limitations on General Provision #22 for Parcel 2 of DP-191 Wilson Property CUP to allow construction of an additional 10,000 square feet office building. The property is 21.4 acres in size, with approximately 4 acres zoned "LC" Limited Commercial and 17 acres zoned "GO" General Office.

Amendment #9 altered General Provision #22 to increase commercial use (not including hotel, office and financial institutions) to 196,807 square feet for Parcels 2-8. Subsequently, this was increased to 216,488 square feet by administrative adjustment in March 8, 2003.

In General Provision #22 (Amendment #9), the amount for office or hotel was set at 276,000 for Parcels 2 and 3 combined; the amount for office or medical was set at 200,000 square feet for Parcel s 1, 2 and 3 combined. An administrative adjustment dated August 21, 2001 increased the amount for office or hotel to 280,000 and for office or medical to 220,000 square feet. The Unified Zoning Code precludes increasing the overall density of development by more than ten percent. Because of the previous adjustments, the applicant would be required to amend the CUP to accomplish the addition of the 10,000 square feet to General Provision #22.

Currently, Parcel 2 is developed with offices and banks. The surrounding area includes the Bradley Fair shopping center and several restaurants located west of Parcel 2 on property zoned "LC". The Shops at Tallgrass shopping center is located to the north, and is zoned "LC" and "NR". Other uses to the north include a restaurant and a bank, zoned "LC", and single-family residential and a convalescent care facility zoned "SF-5". Parcel 2 is flanked on the east, south and southwest by a water feature, with low-density residential use located beyond the water feature, all on property zoned "SF-5". Parcel 1 is wedged within Parcel 2 along 21<sup>st</sup> Street North. Parcel 1 is zoned "GO" and developed with a bank.

**CASE HISTORY:** The property is platted as Lot 2, Block 1, Bradley Fair Third Addition, recorded July 16, 1997.

DP-191 was established April 25, 1988, and first amended on November 5, 1991. Amendment #2 (November 7, 1995, associated with Z-3177) rezoned property to "GO" General Office and "LC" Limited Commercial increased the amount of office and commercial uses permitted, and changed access controls, architectural and signage restrictions, and building height. Amendment #3 (February 6, 1996) added an additional 1.77 acres located south and east of 21<sup>st</sup> Street North and Rock Road, to allow for a slightly different site development plan for a proposed commercial development that approved by the Wichita City Council on November 7, 1995. Amendment #4 (January 16, 1997) combined existing Parcels 1, 2, and 3, into two parcels, reconfigures a common property line share by DP-191 and DP-201, and allowed banks and financial institutions as a permitted use in Parcel 1. Amendment #5 (July 31, 1997) increased the building height from 55 feet to a maximum of 65 feet for a portion of Parcel 2, Bradley Fair Estates. Amendment #6 (October 21, 1997) increased the size of the CUP on the southern edge. Amendment #7 (January 29, 1998) increased signage and reduced spacing between signs for those parcels located along Rock Road. Amendment #8 (March 3, 1998) denied an increase the building sign area on Parcel 1 from 32 square feet to 90 square feet.

Amendment #9 (April 16, 1998) changed Parcel 2 as follows: increased building sign size and height, reduced the building setback line from 35 feet to 15 feet along the south and east property line, and increased the maximum floor area for Parcels 2 and 3 to 276,000 square feet with hotel use on Parcel 3 increased from a maximum of 60,000 to 95,000 square feet.

Amendment #10 (January 14, 1999) combined Parcel 9 into Parcel 8, and approved the entire parcel for "LC" zoning (associated with Z-3308); Amendment #11 (April 13, 2000) again altered the use of Parcel 8 to facilitate the development with several mid-sized retail uses and restaurants. Amendment #12 (June 5, 2003) increased the height and amended the requirements for wall signage on Parcel 8.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC", "NR", "SF-5"	Restaurant, retail, low-density residential, convalescent care facility
EAST: "SF-5"	Water feature, low-density residential
SOUTH: "SF-5"	Water feature, low-density residential
WEST: "LC", "SF-5"	Water feature, hotel, bank, shopping center

**PUBLIC SERVICES:** The site has access to 21<sup>st</sup> Street North, a five-lane arterial, and Bradley Fair Parkway, a collector. The intersection of 21<sup>st</sup> Street North and Bradley Fair Parkway is signalized. The proposed change in traffic is small compared to the overall traffic carried by 21<sup>st</sup> Street North. Other normal municipal services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the general location as appropriate for "office and commercial" development, which is in conformance with the requested amendment.

**RECOMMENDATION:** The requested amendment would allow a relatively minor increase in the development intensity. Based upon this and the information available prior to the public hearing, staff recommends the request for Amendment #13 to DP-191 be **APPROVED** subject to the following conditions:

1. General Provision #22 amend as follows: Maximum gross floor area of office and hotel uses on Parcels 2 and 3 shall not exceed 290,000 square feet. The maximum gross floor area for general office and medical use shall not exceed 239,000 square feet.
2. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as

- determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  5. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Parcel 2 is developed with offices and banks, zoned "LC" and "GO". The surrounding area includes the Bradley Fair shopping center and several restaurants located west of Parcel 2 on property zoned "LC". The Shops at Tallgrass shopping center is located to the north, and is zoned "LC" and "NR". Other uses to the north include a restaurant and a bank, zoned "LC", and single-family residential and a convalescent care facility zoned "SF-5". Parcel 2 is flanked on the east, south and southwest by a water feature, with low-density residential use located beyond the water feature, all on property zoned "SF-5". Parcel 1 is wedged within Parcel 2 along 21<sup>st</sup> Street North. Parcel 1 is zoned "GO" and developed with a bank.
2. The suitability of the subject property for the uses to which it has been restricted: The site is suitable for the uses to which it is restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The modifications will have minor impact on nearby property, primarily in allowing the construction of an additional building at the eastern edge of the parcel.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The project is in conformance with the Land Use Guide of the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The amendment should have insignificant impact on community facilities.

DUNLAP Anyone here from the public to speak on this Item?

**MOTION:** To approve subject to staff recommendation.

**MITCHELL** moved, **JOHNSON** seconded the motion, and it carried (9-0).

❖ **PLANNING COMMISSION ITEM**

11. **Case No.: DR05-06** Request The City of Valley Center seeks annexation of a tract of land located adjacent to the Little Arkansas River and the City of Valley Center

**Background:** On January 6, 2005, the City of Valley Center passed Resolution No. 473-05 petitioning the Sedgwick County Board of County Commissioners to commence proceedings to consider the unilateral annexation of a 24 acre tract of land located adjacent to the Little Arkansas River, Third Street, Interurban Drive and the current city limits of the City of Valley Center (on three sides). Due to its size, this tract is not eligible for unilateral annexation by Valley Center without the approval of the Board of County Commissioners. The Board must determine whether an approval of the proposed annexation will cause manifest injury to the owners of the land being annexed, or the city if the annexation is not approved. Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

That portion of the proposed annexation area located **east** of the Little Arkansas River falls within the Small City Growth area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002. Although the Sedgwick County Development Guide Map does not specifically designate future growth areas for each small city in Sedgwick County, it appears that this portion of the proposed annexation tract could be serviced and maintained by the City of Valley Center. All that portion of the subject annexation tract located east of the Little Arkansas River falls within the future growth area of Valley Center as depicted in the City of Valley Center Comprehensive Plan amended August 28, 2003.

That portion of the annexation tract located **west** of the Little Arkansas River falls within the future growth area of the City of Wichita as designated in the Wichita-Sedgwick County Comprehensive Plan, and falls outside the future growth area of the City of Valley Center as depicted in the City of Valley Center Comprehensive Plan amended August 28, 2003. The City of Valley Center has submitted a service plan describing the extension of services to the annexation area. The service plan does not specifically address the practical constraints and economic costs of extending water and sewer services to that portion of the annexation tract located west of the Little Arkansas River.

Staff has concluded that that portion of the 24-acre tract of land located **east** of the Little Arkansas River proposed for annexation by the City of Valley Center is consistent with the Wichita-Sedgwick County Comprehensive Plan, and the City of Valley Center Comprehensive Plan. However, that portion of the subject tract located **west** of the Little Arkansas River falls within the future growth area of the City of Wichita and outside the future growth area of the City of Valley Center as depicted in both the Wichita-Sedgwick County Comprehensive Plan and the City of Valley Center Comprehensive Plan.

**Recommended Action:** That the Metropolitan Area Planning Commission finds that portion of the 24-acre tract of land located **east** of the Little Arkansas River proposed for annexation by the City of Valley Center (Resolution No. 473-05) to be consistent with the Wichita-Sedgwick County Comprehensive Plan, and the City of Valley Center Comprehensive Plan. However, that portion of the subject tract located **west** of the Little Arkansas River falls within the future growth area of the City of Wichita and outside the future growth area of the City of Valley Center as depicted in both the Wichita-Sedgwick County Comprehensive Plan and the City of Valley Center Comprehensive Plan.

DAVE BARBER Planning staff presented report.

MITCHELL What's the south boundary of tract?

BARBER It is bounded on the south by East 63<sup>rd</sup> Street North.

BISHOP Just to clarify, the planning documents for Valley Center and for Wichita-Sedgwick County appear to indicate that the river is a logical demarcation line between Valley Center and Wichita?

BARBER It makes sense ... the river is a natural barrier

BISHOP Where is Wichita's city limit in relationship to the river?

BARBER Wichita city limits coincide with the river in most of this area.

MCKAY Is the tract ownership on both sides of the river the same people?

BARBER Yes.

**MOTION:** To approve the annexation by the City of Valley Center.

**MCKAY** approve, **WARNER** seconded.

BARBER Actually the motion needs to be a finding with consistency with the Comprehensive Plan, not whether you approve the annexation or not.

DUNLAP That is right, and it is Valley Center's Comprehensive Plan?

BARBER No, it is consistency with the Wichita-Sedgwick County Comprehensive Plan.

MITCHELL How can say this annexation is consistent with the Plan when the Plan says that area west of the river is with the growth area of the City of Wichita?

DUNLAP That is what I want to know?

BARBER That's the issue.

DUNLAP If we only allow or suggest that they annex just east of the river, they will then touch it and can unilaterally annex west of the river. It is automatic and they will just come back with another motion and do it, so there is no reason to stop it here.

BOB PARNACOTT Assistant County Counselor That is an interesting question. The reason that they have to go through this process to begin with is because it is not eligible for unilateral annexations by the City of Valley Center due to excessive size. They would be left with a small four-acre tract that won't be annexed. I think based on my understanding of annexation laws; either City at that point could follow-up with a unilateral non-consensual annexation.

DUNLAP As you all maybe aware, we have some significant study on annexations.

MITCHELL The City of Valley Center can't realistically provide sewer and water services to that portions of the tract on the west side, and the City of Wichita can.

DUNLAP That is true, but you have the same owner here to.

HENTZEN What motion is made now?

DUNLAP The motion is to approve the annexation of the whole tract.

HENTZEN Aren't we suppose to decide only if this complies with the Comprehensive Plan?

BISHOP And it does not.

DUNLAP The motion is that it does.

HENTZEN I want to support what Mitch is saying, that Valley Center cannot provide the services either, and Wichita can. It is really that simple.

BARBER The recommendation as staff has proposed is that you find that portion of the tract east of the Little Arkansas River consistent with the Plan, and that westerly portion of the tract fragmented by the Little Arkansas River, outside the future growth area of Valley Center.

MCKAY Show me where the city limits of Valley Center are presently, in relation to the City of Wichita.

BARBER Here, and here.

**SUBSTITUTE MOTION:** That the Metropolitan Area Planning Commission finds that portion of the 24-acre tract of land located **east** of the Little Arkansas River proposed for annexation by the City of Valley Center (Resolution NO. 473-05) to be consistent with the Wichita-Sedgwick County Comprehensive Plan. However, that portion of the subject tract located **west** of the Little Arkansas River falls within the future growth area of the City of Wichita as depicted in the Wichita-Sedgwick County Comprehensive Plan.

**BISHOP** moved, **MITCHELL** seconded the motion, and it carried (8-1). (**MCKAY**, opposed)

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The Metropolitan Area Planning Department informally adjourned at 3:51 p.m.

State of Kansas)  
Sedgwick County) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)